

REMARKS

In the Office Action mailed 1/11/2006, Claim 4 was cancelled. Claim 1 was rejected for obviousness-type double patenting. Claims 2-3 and 5-20 were rejected as being obvious over the prior art under 35 U.S.C. § 103. Claim 1 was rejected as being anticipated by the prior art under 35 U.S.C. §102(e).

In response, Applicant has submitted the proposed amendments to claims 1, 2, 9, 16 and 18.

For the reasons set forth below, reconsideration of the rejections is requested and allowance of the present application is submitted to be in order.

Rejection Finality Premature

As a preliminary matter, Applicants respectfully assert that the finality of this rejection is premature. The Examiner indicates that Applicants' previous amendment necessitated the new grounds for rejection, however this only presents a part of the facts. Here, the Examiner has conducted a new supplemental search, into a radically distinct classification and subclassification in order to uncover the Seals reference. Not only was Seals not previously relied upon in rejecting Applicants' claims, but it was not even cited as a tangential reference. As such, it was not Applicants' amendment that necessitated the new grounds for rejection, but rather was the Examiner's new search. Since all of the claim rejections rely upon Seals, the final rejection of all of the claims is premature, and the

Examiner must withdraw such finding to give Applicants their rightful opportunity to respond and amend the claims as may be their choice.

Patentability of Independent Claim 1

Applicant's Claim 1 (as proposed amended), recites:

Claim 1. "A pet food storage container, comprising:

a housing defining a main chamber and an opening for accessing said main chamber, said main chamber defining a height, said housing defining an outer surface having a bottom wall and two side walls;

a tray pivotally attached to said housing side walls, said pivotal attachment comprising a pair of arms in spaced relation extending from said tray to each pivotally attach to one said side wall;

a platform movable along said height;

elevation adjusting means attached between said platform and said housing, said elevation adjusting means configured to move said platform along said height, said bottom wall configured to prevent said elevation adjusting means from extending through said housing; and

a lid configured to cooperate with said housing to close said opening."

The Examiner has, for the first time, cited Seals, U.S. Patent No. 6,611,986 as anticipating Applicants' claim 1 under 35 U.S.C. §102(e). Seals teaches a "Disposable Cleaning Pad Dispenser." Seals fails to teach at least the following: (a) a pet food storage container, and (b) a tray pivotally attached to said housing side walls. Since each and every element of Applicants' claimed invention is not found in Seals, the Examiner has failed to

make out a prima facie case of anticipation, and this ground for rejection must be withdrawn.

Obviousness Rejections of Claims 2, 3, 5 and 9-20

All of these claims are rejected by reliance upon the Seals reference in combination with Kaiser, II, Walton et al., and Waller. Seals fails to have anything to do with pets, pet food, or pet food containers. Seals is in Class 15/210.1, for "HANDLING: HAND AND HOIST-LINE IMPLEMENTS (SPECIAL WORK)," and alternatively 294/19.1 for "HANDLING: HAND AND HOIST-LINE IMPLEMENTS (POLE-MOUNTED)." In contrast, the other primary references relied upon by the Examiner lie in 220/603 for RECEPTACLES (WITH WEIGHT OR COUNTERWEIGHT) Walton et al.; 280/30 for "LAND VEHICLES (CONVERTIBLE)" Kaiser, II, and 280/47.35 for "LAND VEHICLES (PLURAL LOAD SUPPORTS)" Waller et al.

Since Seals is unrelated to either Applicants' field of invention or the fields of invention of any of the cited reference, absent a specific, credible reason why one skilled in the art of Applicants' invention would make such a departure to another invention field in order to solve the problems experienced by the inventor. The analysis focuses on the person skilled in the art at the time of Applicants' invention, and not now in hindsight.

It is well-settled that it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. "One cannot use hindsight reconstruction to pick

and choose among isolated disclosures in the prior art to deprecate the claimed invention.”¹

In closing, the Examiner dismisses Applicants’ previous assertion that Kaiser, II is nonanalogous, stating that containers are not defined by what they store, but by their purpose of storing items. Applicants have herein provided proof that the Examiner has erred here. Arguably, Walton is in the field of containers. Kaiser, II, Seals and Waller, however, are not classified as containers. If one subscribed to the Examiner’s position, than a pair of pants would also be analogous to Applicants’ invention, since the pants have pockets, which are containers for personal items. Clearly, an item of clothing is not analogous to a pet food storage container; it would simply not function for such a purpose. References must be either: (a) in the field of the inventor’s endeavor, or (b) reasonably pertinent to the specific problem with which the inventor was involved.² Here, there is no evidence in the record (absent the Examiner’s conclusory statements) that Seals is in Applicants’ field of endeavor.

In the subject Action, the Examiner makes the statement that “pets eat anything, including trash” to support his conclusion that “most containers can be considered pet food containers.” Even if this were true, it does not make all containers analogous to pet food containers. There simply is no evidence that the cited references are reasonably pertinent to Applicants’ claimed invention.

At the very least, Claims 11 – 15 are drawn to a combination of a pet food package and a mobile pet food storage container. Not only do none of the cited references suggest a pet food storage container, but they certainly do not suggest a

¹ In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992).

² See In re Deminske, 796 F. 2d 436, 442, 230 U.S.P.Q. 313, 315 (Fed. Cir. 1986).

combination of a package of pet food and a storage container for the packaged food. This distinction is not trivial, but it has not been specifically addressed by the Examiner.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests that the application be reconsidered, the claims be allowed, and the case passed to issue. If any impediment to the allowance of the claims remains after consideration of this request for reconsideration, and such impediment could be alleviated during a telephone interview, the Examiner is invited to telephone the undersigned so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

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